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# The Dismissal of Prime Ministers in the Asian Commonwealth: Comparing Democratic Deconsolidation in Malaysia and Sri Lanka

ASANGA WELIKALA

## Abstract

This article comparatively analyses processes of democratic deconsolidation in the Asian Commonwealth states of Malaysia and Sri Lanka by examining two recent constitutional crises in which the head of state dismissed, or attempted to dismiss, the serving prime minister during a parliamentary term. These episodes brought to a close fledgling reform movements that had obtained historic electoral mandates in both countries. The article discusses the Westminster-derived constitutional provisions concerning government formation as well as the distinctive features of political culture that animate those formal frameworks in the two countries. It is argued that while Malaysia and Sri Lanka possess the formal institutions of liberal democracy that notionally enable both pluralistic democracy and greater democratisation, their political cultures still have sufficient potency to be a counteracting force against the deeper consolidation of constitutional democracy. Democratisation therefore remains a work in progress in both countries.

**Keywords:** Malaysia, Sri Lanka, Commonwealth, dismissal of prime minister, democratic deconsolidation

## Introduction

THE DISMISSAL OF the prime minister by the head of state in the middle of the parliamentary term is a constitutional issue that has recently arisen in the Asian Commonwealth countries of Malaysia and Sri Lanka. The Sri Lankan constitutional crisis of October to December 2018 was precipitated when the president purported to dismiss and replace the prime minister, but this unilateral and unconstitutional action was successfully resisted by parliament and the courts. In less dramatic but nevertheless controversial circumstances in Malaysia, the apparent disintegration of the governing coalition formed the basis of the successful replacement of the prime minister by the king in February to March 2020. In this article, I comparatively analyse the law and the politics of these two episodes with two aims in mind. Firstly, to understand how the similar Westminster-derived legal framework of government formation functions in the two different

contexts within the Asian Commonwealth. Secondly, I explore what they reveal about the state of constitutional democracy in the two countries by looking at the underlying causal factors of political culture.

It may not seem obvious in terms purely of constitutional form why Malaysia, a Southeast Asian federal parliamentary monarchy, and Sri Lanka, a South Asian unitary presidential republic, are appropriate subjects of comparative study, but there are historical, institutional, and cultural similarities that make their comparative analysis particularly apt. As former British colonies, they share a constitutional inheritance informed by the principles of the English common law and British parliamentary practice. Their constitutional provisions governing the appointment of the prime minister by the head of state are similar, and reflect the twin principles of confidence and responsibility derived from the Westminster heritage. Indeed, Sir Ivor Jennings, the leading constitution-maker in the era of British decolonisation in Asia,

played a significant role in the drafting of both countries' independence constitutions.<sup>1</sup> But they are not identical because the frameworks have been adapted to reflect the local contexts. In Malaysia, the independence constitution of 1957 remains in force, albeit with several major reformations of the underlying political settlement. While Sri Lanka has had three constitutions since independence in 1948, the requirements of confidence and responsibility underpinning the appointment of the prime minister have remained broadly the same, and have survived the turn to republicanism and semi-presidentialism in the 1970s.

But perhaps the most compelling reason for a comparative analysis is the similar recent pattern of the rise and fall of democratisation in Malaysia and Sri Lanka.<sup>2</sup> The path dependency of the postcolonial style of statecraft involving ethnocentric politics and clientelist leadership came under challenge by noteworthy pro-democracy coalitions built across politics and civil society in response to authoritarianism and corruption. These movements resulted in a change of government with a clear electoral mandate for democratising reform. However, the reformist political coalitions disintegrated midway, significantly owing to personality clashes in the elite leadership, but exacerbated by other, more structural, weaknesses of political cultures. As a result, a constitutional crisis erupted and led to the loss of power by reformists, signifying the onset of a period of 'democratic deconsolidation'.<sup>3</sup>

## The selection of the prime minister by the head of state in the Commonwealth

In British constitutional practice, the selection of the prime minister is one of the few remaining personal prerogatives of the monarch. It is also seen as unique among them because it involves a special type of exemption from the requirement of ministerial advice. There appear to be three underlying reasons why the monarch is not required to select an incoming prime minister on the advice of the departing one. Firstly, the responsibility for advice relies upon the ultimate sanction of loss of office, and this force

is lost when it has already been determined that the serving prime minister is to stand down. Secondly, a prime minister who has lost the confidence of the house, or has been defeated in a general election, does not command the confidence of the house, and thus cannot offer responsible advice. And thirdly, there is no way of ensuring that departing prime ministers' advice as to their successors would be without partisanship or caprice.<sup>4</sup> A prime minister who has not lost confidence or been defeated in an election, but is resigning for personal reasons, may offer views on the succession for the consideration of the monarch, but the established principle is that the monarch is not constitutionally obliged to act on this.

The exercise of this power is, in turn, subject to two stipulations consistent with modern democracy. While the monarch is personally responsible for the selection of the prime minister, the accountability for the decision is placed on the incoming prime minister. Thus, if the monarch has acted inappropriately, the person invited to form the government could decline acceptance.<sup>5</sup> More importantly, the recognition that this is a personal prerogative is not to say that it is a discretion unqualified by implied limitations. The general requirement is that the monarch must 'secure the strongest Government in the minimum time'.<sup>6</sup> A substantive limitation therefore is that the monarch must not choose a prime minister on partisan or subjective considerations, but by reference to what would be acceptable to the house. It follows from this that a procedural limitation on the prerogative would be that the person sent for would, normally, enjoy the support of a majority in the house.

While confidence in the prime minister is normally expressed with the support of a majority, there may be occasions when no such majority exists. A hung parliament is the most common example. Another is where the serving prime minister has lost confidence, but the leader of the opposition cannot readily command the confidence of an alternative majority. To accommodate these situations, the flexibility of the prerogative is again helpful, by facilitating the formation of governing coalitions, minority governments, or confidence and supply arrangements, until such time as a general election can be held.

Across the Asian Commonwealth, these Westminster conventions find legal expression in written constitutions. But there is some variation in both the level of textual detail as well as the institutional architecture of the relationships within the executive, and between the executive and parliament. Brunei and the Maldives are not relevant here, as one is an absolute monarchy and the other is a pure presidential system. Of the others, the Indian constitution is the least directory and the most reliant on conventions, providing only for the basic function of the head of state to appoint the prime minister. The constitutions of Bangladesh and Singapore condition the head of state's discretion in the appointment of the prime minister explicitly by the requirement of the support of a majority of the members of parliament. In Pakistan, the prime minister is elected by an affirmative vote of the majority of the members of the lower house.<sup>7</sup>

The Malaysian and Sri Lankan procedures are examples of this variety, but in order to compare the two, it is first necessary to have an idea of their broader constitutional frameworks of executive power. In this regard, Malaysia has retained its more classically Westminster parliamentary-monarchical character, while in Sri Lanka there is a 'premier-presidential' model of semi-presidentialism, which nevertheless regulates the relationship between the head of state and the prime minister according to Westminster conventions.<sup>8</sup>

### *The king and the prime minister in Malaysia*

The executive power of the federation is formally vested in the constitutional monarch—the King of Malaysia or *Yang di-Pertuan Agong*—which he generally exercises on the advice of ministers, except where the constitution requires him to act in his own discretion (Articles 39 and 40(1)). The appointment of the prime minister is the first of the functions under the constitution that the king may exercise according to his own discretion (Article 40(2)(a)). Article 43(2)(a) then provides that, 'the Yang di-Pertuan Agong shall ... appoint as Perdana Menteri (Prime Minister) ... a member of the House of Representatives who in his judgment is likely to

command the confidence of the majority of the members of that House'. The question whether from this the king also has an implied power to dismiss the prime minister remains unclear. The wording of Article 43 (4) puts the onus on the prime minister to tender the resignation of the cabinet if he ceases to command the confidence of the majority in the lower house (unless he requests a dissolution), but does not state what the king should do if the prime minister does not resign, or does not request a dissolution.<sup>9</sup>

The provisions of Articles 40(2)(a), 43(2)(a), and 43(4) are thus at the heart of the relationship between the head of state and the prime minister. Article 40 formally grants the king a personal discretion to act without ministerial advice in the appointment of the prime minister, which Article 43 qualifies by limiting the scope of that discretion to exercising his judgement as to which member of the lower house can command the confidence of a *majority* of that house. What constitutes a majority is not defined—for example, whether of the whole membership or simply of those present at a vote of confidence—and then whether the requirement is a simple or absolute majority. But it seems to be generally understood that majority means an absolute majority of the whole membership of the *Dewan Rakyat*.<sup>10</sup> The express requirement that confidence means the support of a majority in the lower house precludes minority governments. This is more restrictive than the analogous provision in Sri Lanka, where there is no reference to a 'majority'.

These provisions had, however, never been tested given the overwhelming coalition majorities enjoyed by prime ministers for so much of Malaysian postcolonial history. It was only in the 2018 general election that the dominant coalition lost power, and set the stage for an examination of how the relation between head of state and prime minister might work in a more diffused configuration of parliamentary representation. While there are political precedents and judicial pronouncements at the subnational level about how chief ministers are appointed and dismissed (according to a similar Westminster-style framework as at the federal level), there seems to be considerable ambivalence

about what the constitutional rules may mean in practice.<sup>11</sup>

### *The president and the prime minister in Sri Lanka*

Sri Lanka began its postcolonial existence with a classical Westminster-style constitution, but has had a semi-presidential system since the 1978 constitution. Executive power is exercised by a directly elected fixed-term president and a prime minister and cabinet of ministers drawn from parliament and responsible to it. The president is both head of state and head of government in the Sri Lankan system. But the relationship between the president and the prime minister has found textual articulation in virtually the same way as in the previous parliamentary constitution of 1972, and with the Westminster conventions governing that relationship under the constitution of 1947. Article 42(4) provides that, 'The President shall appoint as Prime Minister the Member of Parliament, who, in the President's opinion, is most likely to command the confidence of Parliament'.

As in Malaysia, this formulation reflects the essential Westminster principle, but with two differences. First, the presidential discretion is to be inferred from the reference to the president's 'opinion', whereas the Malaysian constitution stipulates clearly that the appointment of the prime minister is a personal discretion of the king, the judgement in relation to which may be exercised without ministerial advice. This is consistent with the semi-presidential framework, where the elected executive president is only constitutionally required to act on the advice on the prime minister in the appointment and dismissal of other ministers. Second, there is no requirement that confidence in the prime minister is to be expressed with the support of a *majority* in the house. In other words, the Sri Lankan constitution does not preclude the possibility of minority governments, which are, in fact, occasionally demanded by the constitutional asynchrony in the timing of presidential and parliamentary elections. In 2015 and 2019, presidents were elected when opposing parties held the parliamentary majority and were required to appoint minority governments until parliamentary elections could be held.

The fact that the prime minister may not command a majority in the house has been less consequential in the Sri Lankan context because of the ballast provided by the executive presidency. It is buttressed by its own electoral mandate and legitimacy independent of parliament, and its own source of substantive constitutional powers. Moreover, except for three periods of 'cohabitation' in 1994, 2001–4, and 2015–19, which have been exceptions to the norm, the 1978 constitution has operated through 'consolidated majority government', that is, the president and prime minister have usually belonged to the same majority in the legislature.<sup>12</sup> Notwithstanding these countervailing factors of power and authority, however, it is not as if the directly elected president can ignore parliament's wishes in the appointment and dismissal of the prime minister. But the extent to which parliament's views are heeded has varied according to the prevailing political conditions.

It is in this context that the significant reformation of the relationship between the president and the prime minister by the Nineteenth Amendment to the Constitution enacted in 2015 assumes significance. While maintaining the textual formulation of Article 42(4), the Nineteenth Amendment transformed the 1978 constitution from a 'president-parliamentary' to a 'premier-presidential' model of semi-presidentialism, *inter alia*, by strengthening the position of the prime minister. The president can no longer dismiss the prime minister, who now loses office only on the loss of the confidence of parliament in the government as a whole, by death, resignation, or on ceasing to be a member of parliament (Articles 46(2), 48). The vacation of office by the prime minister in any of these ways leads to the dissolution of the cabinet and the fall of the government. Together with the new requirement that other ministers can now only be appointed and dismissed by the president on the advice of the prime minister, the removal of the president's power to dismiss the prime minister indirectly changes the power of appointment as well. The president's discretion of appointment is now more dependent on the confidence of parliament in the prime minister, for unless the latter commands the confidence of the house, he cannot give the



responsible advice for the formation of the government. In other words, it is now parliament and not president that substantively determines which member of parliament can be appointed prime minister, even though the formal appointment remains a function of the president. But in Sri Lanka, as noted, the prime minister does not formally need the support of a *majority* of members to claim the confidence of the house.

## Constitutional crises and political culture

The foregoing analysis of the formal legal frameworks in Malaysia and Sri Lanka sets out the institutional backdrop against which to compare the two episodes of constitutional crisis. These crises in turn allow us to draw some conclusions about the state of constitutional democratisation in the two postcolonial countries. They reveal more starkly than in normal times the agents and practices—the political cultures—through which formal institutions are animated.

### *Sri Lanka: the constitutional coup crisis of 2018*

President Mahinda Rajapaksa lost the presidential election of January 2015 to a broad coalition of political parties and a civil society movement demanding constitutional reform. He had won the war against Tamil Tiger rebels, spearheading a triumphalist nationalism of the Sinhala–Buddhist majority, and entrenched presidential authoritarianism through the Eighteenth Amendment to the Constitution in 2010. This removed presidential term limits and procedural constraints on presidential powers. But the formal removal of constitutional limitations, and the creation of a culture of impunity and excess through informal and illegal practices, generated the conditions for the Rajapaksa regime's undoing. The two aims of the civil society groups and political parties coalescing in opposition to the regime were to remove Rajapaksa from office, and to either abolish or reform the executive presidency through a change to the constitution.

On defeating Rajapaksa, the new president Maithripala Sirisena appointed the leader of

the opposition, Ranil Wickremesinghe, as prime minister at the head of a minority government. Even though parliament still had a pro-Rajapaksa majority, the new government succeeded in enacting the Nineteenth Amendment in May 2015 with near-unanimity in parliament. The Sirisena–Wickremesinghe coalition won a parliamentary majority in the elections of August 2015, and started a process of drafting a new constitution, which may have abolished presidentialism altogether. However, this process fell victim to the unravelling of the reform coalition from around 2017. The competing electoral self-interest of both the president and prime minister, defined by the practices of the traditional political culture, trumped the requirements of coalitional politics needed to enact reform.

The irreversible breakdown in the crucial relationship between president and prime minister was registered in the constitutional crisis of October–December 2018. On the night of 26 October, Sirisena dismissed Wickremesinghe without warning, and replaced him with Mahinda Rajapaksa (the former president, now a member of parliament) as prime minister. This was unconstitutional in that Wickremesinghe had not lost the confidence of parliament, and hence could not be removed, as discussed above. After trying and failing to assemble a parliamentary majority for Rajapaksa, the president also purported to dissolve parliament on 9 November, an act that was again unconstitutional given that it occurred during a period within which parliament could not be dissolved except with a resolution passed by a two-thirds majority. The crisis eventually ended in December when parliament consistently refused to support Rajapaksa and both the Court of Appeal and the Supreme Court held the presidential acts to be unconstitutional.

The new constitutional relationship between the president and the prime minister was trialled by ordeal in the crisis. As the relevant constitutional provisions admit of no reasonable interpretational doubts, in trying to dismiss and replace the prime minister, the president was either badly advised, or acted on a political calculation that he could get away with it notwithstanding the patent illegality. But Wickremesinghe did not vacate

office, and the parliamentary majority in his favour—of 122 of 225 MPs, with the support of two other parties outside his coalition—consistently held up, despite strenuous attempts by Rajapaksa and Sirisena to induce defections. During the period of the crisis, parliament passed two votes of no confidence in the purported government of Rajapaksa and a vote of confidence in Wickremesinghe. On an application for a writ of *quo warranto* by all 122 MPs against the disputed transfer of power, the Court of Appeal issued an interim order denying Rajapaksa the authority to hold the office of prime minister (but as the crisis ended for other reasons, the action was abandoned and the court did not have an opportunity to hand down a judgment to settle the matter).

In these ways, both parliament and the courts played their role in counteracting an act of 'executive aggrandisement'.<sup>13</sup> More specifically, an important political precedent was established for the proposition that, in the appointment and dismissal of the prime minister, it is the objective institutional facts of who enjoys the confidence of, and responsibility to, parliament that matter more than the subjective preferences of the president.

While that seems like a valuable milestone of deepening democratisation, it must be asked why the crisis occurred in the first place. A president and prime minister so overtly elected to implement a programme of reform were ultimately unable to prevail over the entrenched counter-democratisation political culture. Threatened by the regrouping of the Rajapaksas, the president abandoned reform in the pursuit of the Sinhala-Buddhist constituency. The prime minister was tainted by a corruption scandal involving a questionable issuance of treasury bonds, despite being elected to address Rajapaksa corruption. Both were fatally damaged by the governmental incompetence and negligence that led to the most significant terrorist attack since the end of the war on Easter Sunday 2019.

The crisis ended the reform process, rendered the government almost completely dysfunctional, and worst of all, discredited the notion of democratic reform in public perceptions. This made possible the return of the Rajapaksas to power in the next election in November 2019, with an explicit promise

to roll back the Nineteenth Amendment and reinstate populist presidentialism.<sup>14</sup>

### *Malaysia: the ousting of Dr Mahathir Mohamad in 2020*

The May 2018 general election in Malaysia ended sixty-one years of single party dominance by the United Malays National Organisation (UMNO) led *Barisan Nasional* (BN), which in various forms had held power since independence. While its traditional dominance had started dissolving some time earlier, the significant cause of defeat was the perceived involvement of prime minister Najib Razak and his associates in the 1 Malaysia Development Berhad (1MDB) corruption scandal (where it was alleged that Malaysia's sovereign wealth fund had been used to channel enormous sums of public money directly to Razak and his family members and business associates).<sup>15</sup> As in Sri Lanka, however, despite the popular mandate for reform, the entrenched structures of the Malaysian political culture would ultimately defeat the democratic transition.

The Alliance of Hope (or *Pakatan Harapan*, PH) which formed an alternative government to the BN in 2018 for the first time was led by Malaysia's veteran leader Dr Mahathir Mohamad and his erstwhile deputy Anwar Ibrahim. Both are former senior UMNO/BN leaders, with a chequered history of political friendship and enmity. They came together to unite a fragmented opposition in the face of Razak's entanglement in the 1MDB scandal. While corruption and clientelism are long-established features of Malaysian political culture, public opposition had been growing, registered by a gradual erosion of electoral support for the UMNO/BN since Anwar's *Reformasi* movement against Mahathir began in the 1990s, and accelerated after notable civil society protests in 2007. However, the scale of the corruption allegedly involved in the 1MDB scandal overshadowed any precedent. The uproar caused by the global scandal (with subsequent investigations launched in at least ten other countries) created the incentive for Mahathir and Anwar to put together a broad opposition coalition of Malay nationalists, an

Islamic splinter group, minority ethnic parties, and liberal reformists. The PH was a coalition in many ways like the one that was assembled in Sri Lanka to defeat Rajapaksa in 2015, involving a large number of unlikely partners united almost wholly with the aim of ousting an unpopular leader.

Razak's government deployed every advantage of incumbency against the PH in the election campaign and the transfer of power after the election on 9 May 2018 was not entirely smooth. After much manoeuvring, the king accepted Mahathir's letter in support of his appointment as prime minister with the signatures of all the 121 elected PH MPs constituting a clear majority in the 222-member *Dewan Rakyat*.<sup>16</sup> Although the 1MDB investigations commenced with alacrity, some of the misappropriated funds recovered, and Razak put on trial, the PH government's reform record was mixed at best.<sup>17</sup> Many of the structural features of Malaysian politics that had hindered democratic consolidation—the unhealthy nexus between politics and business, the 'personalistic fragmented party system' and the ethnicisation of politics—were not, or could not be, dismantled during the twenty-one months of the PH government.<sup>18</sup> Anti-corruption measures were uneven in application, but where introduced, served to generate disgruntlement within the political and business elite. The heavily personalised and ethnicised nature of political leadership made for a weak, fluid, and ill-disciplined party system, which could deliver neither the stability or the compromises required for democratisation. And these factors rendered the uneasy alliance between Mahathir and Anwar at the top of the government more volatile than it should have been. By December 2019, the succession had become a bone of contention not only between the supporters of Mahathir and Anwar but also third parties who wished a turn at power.

The simmering tensions came to a head when, on 24 February 2020, Mahathir resigned as prime minister (although the same day the king appointed him 'Interim Prime Minister'). This gambit was intended to focus the minds of his bickering detractors as to whether they wished to carry on with him, or lose power to UMNO/BN. On 27 February Mahathir announced that the king had

interviewed all MPs and found that no leader commanded a majority to be the next prime minister. In this context, the king, he stated, was leaving it to the *Dewan Rakyat* to elect the new prime minister. Within a few days, Anwar's faction and others had fallen in line and reaffirmed their support for Mahathir. However, Mahathir's resignation also provided the opportunity for machinations by others in the establishment who did not want him to continue, or for Anwar to succeed him. While by 29 February, the PH had regrouped and claimed to have the majority for Mahathir's continuation in office, it appeared that the palace in the meantime had continued to take its own soundings of MPs' views. The palace claimed that in those consultations, despite the claims of PH, the majority favoured Muhyiddin Yassin, who had held office in both UMNO and PH governments. The king thus appointed Muhyiddin as prime minister on 1 March, and although Mahathir and the PH vowed put forward a motion—a 'floor test'—to test his support in the house, such a sitting never took place.

Three factors explain why such an important vote did not take place. Firstly, compared to other Commonwealth legislatures including Sri Lanka, the *Dewan Rakyat* meets relatively infrequently, with long breaks in between sessions and meetings. Before the crisis, it had last met on 5 December 2019, convening for a brief ceremonial meeting on 18 May 2020, and then again commenced meetings from 13 July onwards. Secondly, the executive has much greater control over parliament and its business than in more consolidated Westminster-style democracies. Highlighting the advantages of incumbency in the Malaysian system, once Muhyiddin was appointed prime minister, this meant in effect that no vote of confidence would take place (at least until he was sure of winning it). Thirdly, the coronavirus pandemic. Arriving almost simultaneously with the installation of the new government—and the attendant requirements of lockdown and social distancing—it provided Muhyiddin with a convenient excuse not to recall parliament for an extended period, and time to consolidate his majority. His appointment of historically the largest Malaysian cabinet of no less than seventy members clearly



pointed to a clientelist process of regime consolidation while avoiding a floor test.

The Malaysian episode is clearly distinct from the Sri Lankan one to the extent that the king's actions in the replacement of Mahathir were not as unambiguously in violation of the legal provisions of the constitution as President Sirisena's were. However, the king's actions do raise a question that often arises in Westminster-style systems: a course of action that may be strictly legal may nevertheless be regarded as unconstitutional.<sup>19</sup> The complicated manoeuvrings within the political elite doubtless invited the king's intercession. However, by 29 February both Mahathir and Muhyiddin were claiming majorities. There was no plausible basis for the king to accept the claims of one against the other, except by testing the rival claims on the floor of the house. This would have been the course of action that was consistent with the legal provisions of the Malaysian constitution and the democratic assumptions underlying them. This never happened, as noted. In choosing the course of action he did, the king may have been guided by practices of Malaysian political culture, but it is at least strongly arguable that the opportunity to set a valuable democratising precedent was lost.<sup>20</sup>

## Conclusion

As the analysis of their constitutional provisions relating to government formation has shown, Malaysia and Sri Lanka are, formally, constitutional democracies based on the liberal values of the Westminster system. In addition to the institutional similarities owing to historical reasons, as Commonwealth member states today, they also subscribe to the liberal democratic values of the Commonwealth Charter. Both countries, therefore, have in place the formal institutions of democratisation and in Sri Lanka it was further shown that formal constitutional amendment to facilitate democratisation is also possible under the right conditions.

However, the recent regime change episodes discussed in this article reveal the political cultures through which those formal constitutional provisions are operated. Political cultures are constituted by agents and the practices through which they pursue the

ends of politics. Those cultures are characterised by a number of common features in Malaysia and Sri Lanka. Formal constitutional texts do not fully describe the political realities of ethnocratic statecraft. Political parties are weakly institutionalised, with little discipline or internal democracy, making them prone to fragmentation and unable to implement a coherent policy platform, let alone sustain transformative popular mandates for constitutional and governance reform. Weak parties result from, and perpetuate, the personalisation of politics around political entrepreneurs. Personalism is fed by multiple factors including clientelist understandings of social leadership in ethnic cultures—the interventions of both president and king were guided by a personalist conception of the role of the head of state. All these features in turn act as cultural incentives to pervasive systemic corruption, both financial and moral, and militate against the objectives of democratisation, such as depersonalised office, policy-based parties, horizontal and vertical accountability between elections, and transparency.

If the elections of 2015 in Sri Lanka and 2018 in Malaysia showed the promise of democratisation that remains in these countries, the crises of 2018 in Sri Lanka and 2020 in Malaysia showed that the old political cultures still have sufficient vitality to counter-act incentives for reform. In both countries, therefore, democratisation remains a work in progress.

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## Notes

- 1 J. M. Fernando, 'Constitutionalism and the politics of constitution-making in Malaya, 1956–1957', and A. Welikala, 'Specialist in

- omniscience"? Nationalism, constitutionalism, and Sir Ivor Jennings' engagement with Ceylon', in H. Kumarasingham, ed., *Constitution-making in Asia: Decolonisation and State-building in the Aftermath of the British Empire*, Abingdon, Routledge, 2016, chs. 6 & 7.
- 2 For broader contextual analyses, see C.-H. Wong and K. B. Ooi, eds., Special Issue on 'Regime change in Malaysia: GE14 and its importance', *The Round Table*, vol. 107, no. 6, 2018, pp. 661–823; A. Welikala, ed., Special Issue on 'Constitutional reforms in Sri Lanka', *The Round Table*, vol. 108, no. 6, 2019, pp. 605–719.
  - 3 R. S. Foa and Y. Mounk, 'The signs of deconsolidation', *Journal of Democracy*, vol. 28, no. 1, 2017, pp. 5–16.
  - 4 G. Marshall and G. C. Moodie, *Some Problems of the Constitution*, 5<sup>th</sup> ed., London, Hutchinson, 1971, p. 45.
  - 5 A. B. Keith cited in Marshall and Moodie, *Some Problems of the Constitution*, p. 45.
  - 6 I. Jennings cited in Marshall and Moodie, *Some Problems of the Constitution*, p. 47.
  - 7 See Constitutions of India: Article 75; Bangladesh: Articles 56–57; Singapore: Articles 25–26; Pakistan: Article 91.
  - 8 A. Harding, *The Constitution of Malaysia: A Contextual Analysis*, Oxford, Hart, 2012, pp. 51–62, 116–124; A. Welikala, 'The Eastminster viceroy and the republican monarch: the Sri Lankan head of state and the 2018 constitutional crisis in historical context', in H. Kumarasingham, ed., *Viceregalism: The Crown and its Representatives in Political Crises in the Post-War Commonwealth*, London, Palgrave Macmillan, 2020.
  - 9 Harding, *The Constitution of Malaysia*, p. 56.
  - 10 S. Abd Aziz and N. A. K. N. Mahmood cited in 'Special sitting of Dewan Rakyat: 112 votes the magic number—constitutional experts', Official Portal of the Parliament of Malaysia, 27 February 2020; [https://www.parlimen.gov.my/tanggal\\_2\\_mac\\_2020\\_bakal\\_lakar\\_sejarah\\_politik\\_negara.html?uweb=web&](https://www.parlimen.gov.my/tanggal_2_mac_2020_bakal_lakar_sejarah_politik_negara.html?uweb=web&) (accessed 24 June 2020).
  - 11 D. A. H. Shah and A. Harding, 'Constitutional quantum mechanics and a change in government in Malaysia', *International Journal of Constitutional Law*, Blog, 8 April 2020; <http://www.iconnectblog.com/2020/04/constitutional-quantum-mechanics-and-a-change-of-government-in-malaysia/> (accessed 24 June 2020).
  - 12 C. Skach, *Borrowing Constitutional Designs: Constitutional Law in Weimar Germany and the French Fifth Republic*, New Haven CT, Princeton University Press, 2005.
  - 13 N. Bermeo, 'On democratic backsliding', *Journal of Democracy*, vol. 27, no. 1, 2016, pp. 5–19.
  - 14 J. Uyangoda, 'Making sense of the October conflict and its aftermath', and S. Ratnapala, 'Reform and crisis: reflections on the culture of constitutional democracy in Sri Lanka', in A. Welikala, ed., *Constitutional Reform and Crisis in Sri Lanka*, Colombo, Centre for Policy Alternatives, 2019, chs. 4 & 6.
  - 15 C. Rewcastle Brown, *The Wolf Catcher*, Padstow, Lost World Press, 2019.
  - 16 A. Harding, 'Reforms in electoral management and government appointments badly needed in Malaysia', *The Round Table*, vol. 107, no. 6, 2018, pp. 807–808.
  - 17 On 28 July 2020, Najib was found guilty on all seven charges and sentenced to twelve years in prison and a fine of £39 million by the High Court in Kuala Lumpur in the first of five separate trials. He is appealing and this may not significantly diminish his political influence on the Muhyiddin government. R. Ratcliffe, '1MDB scandal: Najib Razak handed 12 year jail sentence', *The Guardian*, 28 July 2020; <https://www.theguardian.com/world/2020/jul/28/1mdb-scandal-najib-razak-verdict-malaysia> (accessed 10 August 2020).
  - 18 B. Welsh, "'Old Malaysia" triumphs for now', *East Asia Forum*, 7 March 2020; <https://www.eastasiaforum.org/2020/03/07/the-persistence-of-old-malaysia/> (accessed 24 June 2020).
  - 19 V. Bogdanor, *Beyond Brexit: Towards a British Constitution*, London, I. B. Tauris, 2019, p. 221.
  - 20 Shah and Harding, 'Constitutional quantum mechanics'; see also A. Twomey, *The Veiled Sceptre: Reserve Powers of Heads of States in Westminster Systems*, Cambridge, Cambridge University Press, 2018, Ch. 3.